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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,250	09/28/2001	Michael J. Mullane	MJM-50X	6233

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EXAMINER

MCDERMOTT, KEVIN

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,250

Applicant(s)

MULLANE, MICHAEL J.

Examiner

Kevin McDermott

Art Unit

3635

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 9-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 9-17 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 18-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Specification

Applicants argument that 1:1.875 can be rounded to 1:2 convinces Examiner that 1:2 is acceptable and does not constitute new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smeja in view of Francovitch.

Smeja discloses in figures 1-5 and in column 2, lines 49-60 a snow guard 10 which is fastened to a downwardly inclined roof 11. The snow guard 10 has a base 12 that is fastened to the inclined roof and includes upstanding members 20 projecting upwardly from the base and for engaging the ice or snow accumulated on the roof. Column 3, lines 40-50 disclose the base 12 preferably being a square, although it could be other shapes with a flat bottom wall 25 for fitting against the roof surface. The base 12 is preferably adhered to the roof surface by an adhesive.

The snow guard 10 is the claimed snow stop; the base 12 is the claimed base member; the upstanding members 20 are the claimed snow-restraining members connected to a top of the base 12; and, the upstanding members 20 perpendicularly intersect with each other.

However, Smeja does not specifically disclose the base 12 being round. As discussed above, the base 12 is preferably square but may be other shapes.

Francovitch discloses a metal, round, resilient body for anchoring roofing membrane to a roof.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the base 12 to be round.

One of ordinary skill would be motivated to make such a modification to reduce the cost of the snow guard by reducing the material required for the base 12.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smeja in view of Francovitch and further in view of Cline (U.S. Patent No. 5,522,185).

The disclosures of Smeja and Francovitch and are discussed above. However, neither Smeja nor Francovitch disclose the upstanding members 20 having a convex, circularly bounded outer boundary.

Cline discloses in figures 1-3 and in column 1, lines 54-59, a snow stop 1 having a flat blade 3 formed with curved upper and lower edges.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the upstanding members 20 of Smeja to have convex, circularly bounded outer edges.

One of ordinary skill would be motivated to make such a modification to accommodate a number of seams independently of the width of the seams for the shapes of the seams, which may have wide tops and relatively narrow upstanding portions.

Response to Arguments

Applicant's arguments with respect to claims 18-20 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 1-17 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art does not disclose, and it does not appear obvious to modify the prior art to disclose, a snow stop having the structural limitations recited in claim 1, wherein the underside of the base member has a cross hatch configuration disposed therein.

Claims 21-25 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:


The prior art does not disclose, and it does not appear obvious to modify the prior art to disclose, a snow stop having the structural limitations recited in claim 21, wherein a series of holes are present through the base and connected with grooves disposed on the underside of the base member.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kevin McDermott, whose telephone number is 703-308-8266.



Carl D. Friedman
Supervisory Patent Examiner
Group 3600

KM

KM 2/23/04